

E-FILED - 7/3/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ELIAS HERNANDEZ-MORALES,)	No. C 08-2238 RMW (PR)
)	
Petitioner,)	ORDER OF DISMISSAL
)	
vs.)	
)	
MARTY ANDESON,)	(Docket No. 4)
)	
Respondents.)	

Petitioner, a federal prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner is currently incarcerated at a medical center for federal prisoners in Springfield, Mississippi. In the petition, he states that he is challenging a federal conviction and sentence obtained in Del Rio, Texas, for illegal re-entry after deportation. Petitioner states that he previously filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255.

Petitioner may not proceed with the instant petition under 28 U.S.C. § 2254. Section 2254(a) allows a federal court to entertain a petition for a writ of habeas corpus only “in behalf of person in custody pursuant to the judgment of a state court.” 28 U.S.C. § 2254(a). As petitioner is a federal prisoner challenging a conviction and sentence from

1 federal court, he may not obtain federal habeas relief under 28 U.S.C. § 2254. While
2 petitioner may challenge his federal conviction or sentence in a motion filed under 28
3 U.S.C. § 2255, such a motion must be filed in the federal district court in Texas where he
4 was convicted and sentenced. See United States v. Addonizio, 442 U.S. 178, 185 (1979).
5 As petitioner indicates that he has previously filed a motion to vacate his sentence under
6 28 U.S.C. § 2255, he is cautioned that he must first obtain certification from the United
7 States Court of Appeals before he may challenge the same sentence or conviction a
8 second time under 28 U.S.C. § 2255. See 28 U.S.C. § 2255.

9 For the reasons discussed above, the instant petition is DISMISSED for failure to
10 state a cognizable claim for relief. The application to proceed in forma pauperis is
11 GRANTED.

12 The clerk shall terminate docket number 4 and close the file.

13 IT IS SO ORDERED.

14 Dated: 7/1/08



RONALD M. WHYTE
United States District Judge